

E-FILED 4/16/07

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SERGUEI FEDOROVICH KIM,

No. C 07-01953 RS

Plaintiff,

v.

ORDER TO SHOW CAUSE

DAVID STILL, et al.

Defendants.

On March 26, 2007 plaintiff Serguei Fedorovich Kim, appearing through counsel, filed a "Complaint for Declaratory Judgment of Naturalization under 8 U.S.C. § 1447(b) and 1421(c) and Writ of Mandamus" against David Still, District Director of U.S. Citizenship & Immigration Services, and other government officials in their official capacities. Plaintiff alleges Defendants have failed to process his application for naturalization in a timely manner, apparently as a result of delays in obtaining a completed background check clearance from the Federal Bureau of Investigation. Plaintiff asserts that Defendants have violated 8 U.S.C. § 1447(b), which provides:

If there is a failure to make a determination under section 1446 of this title before the end of the 120-day period after the date on which the examination is conducted under such section, the applicant may apply to the United States district court for the district in which the applicant resides for a hearing on the matter. Such court has jurisdiction over the matter and may either determine the matter or remand the matter, with appropriate instructions, to the Service to determine the matter.

1 Plaintiff requests that this Court assume jurisdiction and act on his naturalization application.

2 Good cause appearing therefor,

3 IT IS HEREBY ORDERED as follows:

4 (1) The Clerk of the Court shall serve a copy of the complaint and a copy of this Order
5 upon counsel for Defendants, the Office of the United States Attorney. The Clerk of the Court also
6 shall serve a copy of this Order upon Plaintiff.

7 (2) Defendants shall, within sixty (60) days after receiving service of the complaint, file
8 and serve upon Plaintiff an answer, showing cause why the relief prayed for should not be granted.
9 At the time the answer is filed, Defendants shall lodge with the Court all records relevant to a
10 determination of the issues presented by the complaint. If Defendants contend that Plaintiff has
11 failed to exhaust administrative remedies as to any ground for relief asserted in the complaint,
12 Defendants shall specify what administrative remedy remains available to Plaintiff. If Defendants
13 waive or concede the issue of exhaustion, Defendants shall so state in their answer.

14 (3) Plaintiff may file a response to the matters raised in the answer within twenty (20)
15 days after receiving the answer.


16 (4) Unless otherwise ordered by the Court, the matter will be deemed submitted upon the
17 filing of the response or upon the expiration of time to file a response.

18 (5) No later than the time their respective responses hereunder are due, the parties shall
19 make their determination regarding the issue of consent to the jurisdiction of the Magistrate Judge
20 and file the appropriate form. In the event any party declines to consent to the jurisdiction of the
21 Magistrate Judge, this action will be reassigned to a District Judge for further proceedings.

22 (6) The Order Setting Initial Case Management Conference and ADR deadlines entered
23 on April 6, 2007, in this action is hereby VACATED.

24 IT IS SO ORDERED.

25 Dated: April 16, 2007

26 
27 RICHARD SEEBORG
28 United States Magistrate Judge

1 **THIS IS TO CERTIFY THAT NOTICE OF THIS ORDER WAS ELECTRONICALLY**
2 **PROVIDED TO:**

3 Martin J. Lawler mlawler@aboutvisas.com, mbayley@aboutvisas.com; ; hopefrye@comcast.net

4 Dated: April 16, 2007

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6 /s/ BAK
7 Chambers of Magistrate Judge Richard Seeborg
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